INSTITUŢIA PARLAMENTULUI, ÎNTRE CONTINUITATE ŞI REFORMĂ

THE INSTITUTION OF PARLIAMENT, BETWEEN CONTINUITY AND REFORM

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Abstract
The reform of the Romanian state is one of the favorite themes in public debates. What does the reform expects, which are its limits, which are the areas that should be reformed and how does the approach should be taken, are questions that are not yet answered. The study is structured to on six parts, which presents an analysis of the constitution of the parliament, a statement of parliamentary structure, with the advantages and disadvantages of bicameralism and unicameralism, a presentation of internationally known political regimes. The Parliament's legislative powers are in relation to how the executive abuse of legislative delegation by issuing emergency orders and to the procedure of assuming the responsibility in the Parliament. On this the study are presented possible options and solutions for reforming the system.

Keywords: parliament, reform, legislative, delegation, political regime

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Rezumat
Reforma statului român reprezintă una din temele favorite în dezbaterea publică. Ce presupune reforma, care sunt limitele, care sunt domeniile care ar trebui să fie reformate şi cum ar trebui întreprins demersul sunt întrebări la care încă nu s-a dat un răspuns. Studiul pe care îl prezint este structurat în şase puncte, în care se face o analiză a constituirii parlamentului, o prezentare a structurii parlamentare, cu avantajele şi dezavantajele bicameralismului şi unicameralismului, se prezintă regimurile politice cunoscute la nivel internaţional. Atribuţiile legislative ale Parlamentului sunt prezentate prin raportare la modul în care executivul abuzează de delegarea legislativă prin emiterea de ordonanţe de urgenţă şi prin procedura asumării răspunderii în faţa Parlamentului. Pe parcursul studiului sunt prezentate opţiuni şi soluţii posibile de reformă.

Cuvinte cheie: parlament, reformă, delegație legislativă, regim politic

PROCEEDINGS OF THE SEVENTH ADMINISTRATION AND PUBLIC MANAGEMENT INTERNATIONAL CONFERENCE
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1. PRELIMINARIES

The institution of Parliament has played over the years, since its appearance in the thirteenth century, a decisive role in states' democratizing. Later, with the proclamation of separation of powers of the state, were emerged two main models of the application of this principle: the English and North American model, respectively parliamentary and presidential regime.

Originally established in the European constitutional systems, the parliamentary regime was then applied in countries from Asia, Africa and North America. Presidential regime had a less remarkable expansion, emerging especially in the U.S. space (Cronin, 1980, 12).

The parliamentary regime, specifically initially for England, is characterized by the executive power, exercised by both a Head of State - not the politically responsible to Parliament and whose acts must be countersigned by the Prime Minister - and Government - which must be ever since its formation, an expression of the parliamentary majority (Interparlamentaire Union, 1977, 60).

Presidential regime concentrates instead the whole executive power in the hands of the President of the Republic. In the U.S. presidential regime is in close interaction with the republican form of the government, as evidenced by the name (Drăganu, 1998, 266).

The presidential regimes are subject to criticism because, in almost all presidential regimes of the 35 states that have adopted this political system (often oligarchic) it has created political, governmental instability, dominated by the power crisis and coups. In several of these countries, only recently the democracy has been strengthened.

2. THE ESTABLISHMENT OF THE PARLIAMENT

Social and political practice has revealed the existence of three pathways for the formation of parliament: a) the partial or total appointment of the members of parliament; b) its constitution up to the way of electors, of census; c) universal suffrage.

a) The partial appointment of the members of parliament is a characteristic of the modern period, when the monarch or president, as head of the state, reserves the right to appoint a part of the legislature, with the intention to control and even subordinate it. Also today, in a certain way, quite a few constitutional systems, especially bicameral system retains the formula of appointing senators of low or for life, as is the case of the U.S. and Italy. This concerns former presidents, prime ministers, religious leaders, political, cultural, artistic personalities. The most

convincing example is Italy, where the President by constitutional powers, may appoint five citizens with a special benefit, as senators for life.

Nowadays, the total appointment of the members of parliament is not a current problem any more, or at least it is not a feature of a democratic system, but of a totalitarian one. This was the case in fascist and communist regimes.

In the communist regime, even if this system enacted the parliamentary appointment, their designation by the same unique force in power, the lack of a multiple-party system and legal political opposition makes it that, in practice, an appointment actually takes place with large control on it.

The situation has not changed in its essence even when communism tried to embellish the electoral system, meaning that in the same district were accepted two or even three candidates. This was not a pluralist or multiple-party alternative, the choice is made between members of same party, who are appointed by same political force on same criteria and policy options. At most, one may speak of elections between candidates based on certain personal characteristics: occupation, social prestige, morality, etc. (Duculescu et al., 1999, 327).

b) The election of the members of parliament by the voters, based on census. This is a characteristic of the modern period, which attempted to link the right to vote of citizens to the census. It can take several forms: census of wealth, sex, age, literacy, or ability. The citizens that do not fulfill the condition of the census could not be direct electors, but they delegate a representative to participate directly in the vote.

c) Universal suffrage. At the beginning of the twentieth century, more and more different social groups have demanded, during general process of democratization of political life, the right to participate directly and actively in construction of the new social developments. The radicalization of political life, the need for democracy, the fear of being left isolated in the new context of social development, have increasingly led political systems and doctrines, political parties and their political program to include universal suffrage.

The universal suffrage is the right of the citizens to participate directly and equally regardless of gender, race, religion, nationality, education level, wealth, in the choice and the establishment of central and local institutions of state power, and to be elected. Universal suffrage has three essential elements, distinct both in terms of content and the conditions that must be met:

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"State Reform: Public Administration and Regional Development"
Bucharest, June 21-22, 2011

- The right to choose. Universal participation in voting is only conditional upon a minimum age limit - in most cases is age 18;
- The right to be chosen requires the accomplishment of some conditions in order to achieve the mandate, such as to have the right to vote, the citizenship, the residence in the country, intellectual skills and moral training to make the canditadte to fit for the mandate;
- The right of revocation is not provided in all constitutional systems, however it is registered in some, as in Indonesia, Switzerland, Lichtenstein. In theste cases its basis is in the fact that the parliament is result of a community will, which must act in accordance with the interests and obligations of voters, and according to that, they can revoke (Duculescu et al., 1999, 295). But viewed from another perspective, the right of revocation is contested. MPs receive a mandate from the electorate collectively under a program, and they participated in the campaign. Neither voters nor MPs are unable to determine in advance the tasks, the lines of action of the parliament and therefore, there is the assumption that the program that s/he obtained the mandate may not be achieved, either in whole or partially. Given the mandate, the elected are part of a public institution. This institution is obliged to decree the legal system, and an imperative mandate would cause an impossibility of carrying out an activity for the community. On the other hand, the elected ones must represent not only those who granted the vote (a highlight of which is impossible and illegal, in the exercise of secret voting), but also those who had other options or did not expressed their right to vote. Today any democratic political system, any system based on a doctrine cannot exist without universal suffrage work (Ardant, 1996, 373).

An important role in the need of reform is a concrete way of electing the MPs. Romania passed from a political voting system, based on the list made at the county level, as the administrative territorial unit, to the uninominal vote system, formed in uninominal colleges. Although this system has apparently created the impression that the citizen is much closer to the decision-making, in reality there was a disruption of the political life and the degree of qualification of Parliament. If on the list system, parties were able to support youth, women, intellectuals, workers, the uninominal vote system develops the institutional hazard and the lack of professionalism of the Member of Parliament for the following reasons:

a) The young intellectuals (doctors, teachers, engineers) have no financial resources to support a campaign;

b) The public awareness was not based on professionalism and competence, but on the appearance in the media obscure, in the cancan;

c) There is no posibilityto create a balance between professional castes in the Parliament;

d) Each parliamentary became interested to recover her/his financial investments and to make opportune investments in their own college. Thus, the objectives beyond such artificial boundaries become unsalable and local development occurs unevenly, depending on political affiliation in the majority supporting the government.

In this context, a subject of parliamentary reform could be the change of the electoral law and also the introducing of a national party list. Another possible reform would be the transformation of the Senate into a chamber of regions.

3. THE CONSTITUTIVE STRUCTURE OF THE PARLIAMENT

In its representation role, for functioning and effectiveness of the parliament, the structure plays a major role. From this perspective we see today parliaments that consist of a single meeting - appointed unicameral assembly, or two meetings - bicameral parliament. The current structure of the parliament is the result of the action and the combination of several factors: the state structure, the constitutional system, the need to modernize and increase the efficiency of this body, national and historical factors and traditions (Muraru and Tănăsescu, 2005, 165). The share, the contribution of these factors in determining the structure of parliament varies from one society to another. In some cases primary factors are related to tradition, in others the state by structure, in most cases, however, the structure of parliament was the result of the combined action of all factors.

a) The unicameral parliament. The unicameral Parliament ensures promptness, fluidity and fluency of the legislative activity. Such a parliament would be very useful and efficient for the societies that go from a totalitarian political system like the communism to a democratic one, where there is a strong need for legislative form and restoration; being numerically small, unicameral parliament requires less cost for maintenance and functionality.

   The existence of the unicameral parliamentary system facilitates the relationship between the parliament and the executive, avoiding any tension or opposition that might arise in the case of a bicameral parliament, between its chambers, between it and the executive or the institution of the head state.

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"State Reform: Public Administration and Regional Development"
Bucharest, June 21-22, 2011

In terms of democracy, the unicameral parliament would not be a too accurate representation of the will of the people, whereas the small number of its members would lead to a restrictive, limited element.

In the unicameral parliament they can create a greater possibility of subordination or domination by the political force that holds the majority, or by the executive, a fact that could create the premises for the establishment of despotism or dictatorship. Such a possibility can be created for the president also who could more easily impose his own political strategy and could lead to alliances and the establishment of majorities, which is somewhat against the meaning expressed by the voters. This risk of violation of voters' will is expressed directly by the President, stating that even if a political alliance, now in opposition, would get an absolute majority of seats the president will not appoint the prime minister proposed by it.

Therefore the simplicity, the rapidity, the fluidity in adopting laws, that are considered characteristics of the unicameralism, would be detrimental to the quality and consistency of the legislation. The unicameralism cannot guarantee the avoiding of constitutional bottlenecks, and a second reading in the upper chamber can benefit democracy, and the fundamental tie of the tasks between the two chambers can be a reform solution.

b) Bicameral Parliament. By the presence of the two chambers and therefore a greater number of members, the bicameral parliament will take a broader representation, a more accurate will of the people of all classes and social groups, of the political forces in society, a fact with positive consequences for its political democracy (Chalvidan, 1996, 157).

A much wider scope and range of political forces represented in the bicameral parliament would remove the possibility of subordination of it, or of the majority social-political forces, or of the executive or president. Thus, it would considerably reduce the possibility of establishing a dictatorship or a totalitarian regime.

The bicameral system allows a wider debate, a deeper draft legislation, it brings in the debate plan options, multiple and diverse solutions, a fact with positive effects on the quality, the consistency, the depth of the legislation.

Many politicians and jurists challenges the plus of democracy given by the bicameral system, referring to the fact that in many systems, the members of a Chamber, the Senate in general, are partly appointed by the President. The bicameral system, the presence of the two chambers, creates a dualism between the two chambers, between political groups of the same party, between power and opposition (Muraru and Constantinescu, 2005, 75). The enlarged

number of members of the bicameral parliament can generate a considerable increase in financial effort for their maintenance and operation. However, additional financial efforts cannot be an impediment as long as the deficit of democracy is diminished and the population can be confident that the vote and its desires are better represented. The bicameral Parliament, through its more difficult mechanism of adopting the laws, with its increased possibility of rejection of a legislative proposal by the chamber, or the inability to achieve mediation between the two chambers, represent the ground for reservations or criticisms of this system.

c) Possible structural reforms. A reform of the parliament could address their individual Senate, either by way of recruitment or by the demarcation of duties. Whether talking about using a different type of electoral vote for the two chambers, about the development of the mechanisms by which administrative territorial units are represented, or about electing senators from the counties / regions, it is obvious that this way is preferable to the termination of this chamber.

The individualization of the Senate could address its skills in order to avoid duplication and overlapping legal skills with the Chamber of Deputies. Thus, one may refer legislative documents to be discussed only in the Senate (eg. the laws on the organization of the local activities), and the competence in some areas to return to it: the ratification of treaties, the appointment of the Constitutional Court, and the foreign policy.

It is not excluded any reform of the number of MPs, but the decision should not be based on the public opinion and on the increase of the distrust in the Parliament. The decrease of the members of the parliament should be a measure to be adopted along with the ban of political migration in the Parliament, and the hard criminal sanction of the direct and indirect election bribery. The policy recruitment of the members of parliament, taken to extremes in the mandate 2008-2012, is an attack on democracy and on the vote casted by voters.

4. POLICY REGIMES ON INTERNATIONAL LEVEL

a) Presidential regime, developed mainly in the United States, is a system that is based on the direct election of the president, on the formation of an executive monocephalic power. The secretaries of state appointed by the President take the place of the European classical cabinet, on the missing of the prime minister, on the separation of the state powers, on the failure of the President in the dissolution of the chambers and on the absence of a reliable voting procedures, but also on developing an independent judiciary policy, with significant

PROCEEDINGS OF THE SEVENTH ADMINISTRATION AND PUBLIC MANAGEMENT INTERNATIONAL CONFERENCE
"State Reform: Public Administration and Regional Development"
Bucharest, June 21-22, 2011

control on constitutional powers. Such a procedure is not an appropriate option for the European democracies; the tradition, the customs, and the risk of generating authoritarianism exclude such a formula.

b) The parliamentary regime, specific to Europe from the English model, is defining for a type of constitutional democracy developed in the European space and English-speaking territories outside Europe. Its prestige is related to the development of the nation state and the revival of European democracy after 1945. The parliamentary regime is specific to Romania also, with a Romanian constitutional tradition that started in 1866.

The Presidential Commission for Analysis of political and constitutional regime in Romania has identified the following common elements of the parliamentary political regimes:

- in the case of the parliamentary republics, the head of state is not elected directly by the nation, but he is selected following a vote of either chamber / chamber, or an electoral college constituted for this purpose. Her/his functions are purely ceremonial and representative;
- the executive structure is two-headed, with a head of state and a head of government;
- defining for this regime is the responsibility of the cabinet to the chamber / chambers;
- the Government is created following a vote of the Parliament;
- symmetrically, the Prime Minister and the Head of State may request the dissolution of one or both chambers;
- the separation of powers is not strict, but adapts itself to a formula that transforms the office chamber into an extension of it.

c) The semi-presidential regime, are the most recent, being characterized by a set of specific elements which are using the two classical regimes, parliamentary and presidential, being widespread in the political practice of many nations in Central and Eastern Europe, Africa and Asia. In this type of political regime, a head of state coexist with a government in a parliamentary designated manner, political crises can be dimmed by bi- or multilateral negotiations, and the degree of institutional flexibility is extended. However, the government is jointly responsible toward the Parliament, which has also the power to withdraw its trust.

The conflicts between the parties that make up the majority, the divisions between the president and the prime minister, the majority fluctuations from the parliament represents in the

same time, matters that recommends this type of political organization and potential risks of generating governmental crisis.

d) Possible options for Romania. It is clear that presidential political regime, the classic American formula is not conducive to Romania. Nor the historic evolutions, the cultural traditions, neither the political culture do not allow this system. Such a solution, applied by a president with strong authoritarian tendencies in a state that has not forgotten the dictatorship period before 1989, with a highly politicized judiciary, with strong branches of government, the oppressive instruments apparently established in democratic institutions (National Integrity Agency and National Anti-Corruption) would constitute a ground for despotic, undemocratic regime.

The option that is emerging is predictable: either the evolution towards a French model (the "prezidentialization" of the regime), or determining a reduction of duties of the Head of State, such Austrian or Irish model. The opinion that the presidential commission is suggesting is that "if there is a similar option to that of 1958, one can identify in it some institutional advantages:

- Once this model is adopted, it becomes possible to resolve the constitutional crisis, thanks to the simplification of the right to dissolve the assemblies;
- The relationship between the premier and the head of state is clarified; the recruitment of the ministerial staff cannot be made against the will of the Head of State;
- On the executive force level, the balance between the Premier and the President is recalibrated;
- The President, through the dissolution of the chambers may have the majorities necessary to carry out the program under which he is mandated by the nation".

However, I believe this view is predictable, given that the committees were part of the recognized experts to pro presidential affinities. It can be noticed that in the committee there are professors of constitutional law that do not belong to Law faculties, but to some Political Science faculties, close as leadership to the government majority. I think that all these stated elements, all the prerequisites of the institutional development in the European context, recommend the Austrian model for a future reform of the regime.

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Bucharest, June 21-22, 2011

5. THE LEGISLATIVE POWERS OF THE PARLIAMENT

In the last eight years, the Parliament has become a legislative annex of the Government. How this was possible is a question that those who are studying empirically the Romanian parliamentarism cannot avoid. In the first place we assist to a de-professionalization of the parliamentary quality. Instead of notable Romanian personalities of university, social and science life, the Parliament has been populated with customers of old and new state penal institutions, with mediocre businessmen, whose single desire is to have a shield in front of the law, with intellectual and moral poor youth, whose only merit is positioning themselves in the long shadow of a political leader.

In the second place, the strong parliamentary will, the serious debates on legislative acts, have been replaced by suburban and slum attitudes, which pleased the lovers of the gossip, but which had serious consequences on the credibility of the institution, defined by the Constitution as the supreme representative body of the Romanian people.

In the third place, the encouragement of political migration has become a quasi-official policy of the parliamentary majority, in the mandate of 2008-2012. The blackmail, the money offerings and other material benefits, the protection against prosecution investigations, the promoting in the executive functions of the family members of the member of the parliament, are just some of the criminal mechanisms aimed at achieving a de-structuring of the opposition and parliamentary majority silent, obedient to the government average. And the ultimate humiliation of the voters was the designation of a party, which was only a result of the betrayal, as the parliamentary party.

Fourthly, most of the bills passed by the Parliament are the result of the government legislative initiatives. The inflation projects, many with similar content, the hallucinatory, aberrant projects of some MPs, the lack of a civic culture that would lead to a citizens' legislative initiative, along with the procedure by which the government is called to decide about supporting a project initiated by MPs, make the Government the main forum for legislative initiation. This fact resulted in reducing the role of the sole legislative authority of Parliament, a constitutional principle guaranteed by the art. 61.

In the fifth place, the Parliament has become an annex of the Government because of the inflation of the Government Emergency Ordinances. Rather than debateing the law, parliamentarians are called upon to approve or reject laws that are already in force, laws that can produce effects and whose rejection can disrupt the economic operators and public safety. Even though the institution of legislative delegation is specific of the critical periods, of armed conflict and imminence of the cataclysms, the Romanian Government made a clear abuse in the issuance of such regulations.

The Constitution adopted in 1991 provides that ordinances can be adopted only in exceptional cases, without being formulated the criteria for defining the exceptional cases. This situation was resolved by revising the 2003 Constitution, the Government may adopt emergency ordinances only "in exceptional cases, the regulation of which cannot be postponed, being obliged to motivate the urgency in their contents" (115, par. 4). The rejection or the amendment of an ordinance by the Parliament does not cancel the effects of the emergency ordinance that it has already occurred, which transforms the government by constitutional fraud, into a true state legislative forum, Parliament's decision being not retroactive.

The lack of the criteria defining this extraordinary situation has allowed to the governments to abuse this bill. In 2009-2011, there were issued three times more urgency ordinances than in the period 1990 - 2009, cumulative. These criteria could be formulated by the Constitutional Court, but it proved reluctance, understandable only through obedience to power, in the exercise of its powers, compared to other constitutional courts.

Sixth, the waiver/the limitation of the liability of the Government to Parliament for a draft law are a necessity. The Presidential Commission found that "the Constitution regulated, by inspiring from the French Government, the liability procedure of the Government toward the Parliament" (Article 114). Unlike the corresponding norm of the Constitution of France, that the Government may assume responsibility before the National Assembly upon a text and before the Senate upon a general policy statement, the Constitution states that Government may assume responsibility before both Houses of Parliament on a program, a general policy statement or a bill. In this case, the Parliament can approve or vote on a motion of censure. The constitutional purpose of this mechanism was distorted in Romania: the Government has frequently employed the laws of large responsibility that included extensive amendment of several laws. Also, in many cases, even if the Government has liability only on a bill, that project was actually a package of laws regulating the object of which was extremely diverse. So far, no-confidence motion was not adopted under the art.114. There were also cases where the Government was liable on a bill without the Parliament to initiate a motion of censure. The balance sheet of the application of this constitutional mechanism shows that the Government violated the role of the legislator of the Parliament, required to pass bills that, if it followed the usual procedure would have been rejected or amended in Parliament. What the Commission avoided to state is that in the period 2009-2011, the accountability was made in excess, on the draft law or the amendment of laws that affect fundamental rights and civil freedoms.

PROCEEDINGS OF THE SEVENTH ADMINISTRATION AND PUBLIC MANAGEMENT INTERNATIONAL CONFERENCE
"State Reform: Public Administration and Regional Development"
Bucharest, June 21-22, 2011

The control of these assumptions could not be done in the Parliament, where most Government is silent, opaque and disinterested in legal issues, but in the Constitutional Court. However, how the constitutional judge hallucinatory issued four conflicting decisions, referring the accountability on the National Education Law, shows that laws can take effect by constitutional fraud also. And the one responsible for ensuring compliance with the Constitution, the Romanian President had the constitutional instrument of the referral document to Parliament, for the debate.

6. CONCLUSIONS

The institution of the Parliament represents in the Romanian democracy the forum that derives its power directly from the citizens, to whom it is politically responsible to carry out specific activities. But the quality of the parliamentary is not easily presented to the general public, the representatives of the executives being exposed to the public attention more easily by the media. The administrator is certainly more attractive for the public opinion than the one who regulates. The negative campaigns, often justified, the poor quality of the members of the Parliament and a lack of political culture made the Parliament an inefficient and unpopular institution, an annex to the executive. The Romanian Parliament is being undermined by the developments that originated, on one hand, by the excessive strengthening of the executive power in the state administration, and on the other hand, by the pressure required, as a criterion for assessing public performance, the number and the speed of the adoption of the normative acts. In this way, the legislative delegation (by issuing emergency orders and the procedure of accountability) is legitimized as a solution that gives the illusion of control and the prospect of an easy regulation. The side effect of this practice is undoubtedly a pervert notion of representation and the emergence of a complex of the dependence of the Parliament to the Government.

A presidential commission observation that the executive does not take account of, may be regarded as a general conclusion: "In our view, an authentic democracy is not just implementing the will of the majority, but also it requires and it is based on the public deliberation, where the minority views and voices must be heard and taken into account adequately. The strengthening of the Romanian democratic regime requires today more than ever the restoration of the constitutionalism, through which we understand a limited government while the sovereign is the law, not the potentially despotic will of an individual or interest group. The pleading that we do here is in favor of a political regime based on political freedom, freedom which, in turn, can only survive under a moderate and temperate regime of separation of the powers, the existence of intermediate bodies and the rule of the law. These limits are placed not only by the political institutions, the laws, the constitutions or the intermediate bodies acting

as shielding in the way of true absolute power, but also by the morals, manners, education, traditions and customs".

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